No. 76-1184

In the Supreme Court of the United States

OCTOBER TERM, 1977

E. I. MALONE, COMMISSIONER OF LABOR AND INDUSTRY FOR MINNESOTA, APPELLANT

v.

WHITE MOTOR CORPORATION AND WHITE FARM EQUIPMENT COMPANY

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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On April 18, 1977, the Court invited the Solicitor General to express the views of the United States in this case. The Government filed a memorandum urging that probable jurisdiction be noted. Probable jurisdiction was noted on October 3, 1977. This brief is an elaboration of the views of the United States.

QUESTION PRESENTED

Whether the National Labor Relations Act preempts a Minnesota statute requiring an employer, upon termination of a pension plan, to pay certain benefits, when such benefits are in excess of those specified in the collective bargaining agreement.

STATEMENT

1. The Minneapolis-Moline Company, a farm implement manufacturer, operated plants in Minneapolis and Hopkins, Minnesota, for many years. Beginning in 1955, it had collective bargaining agreements with the United Auto Workers covering production and maintenance employees. Those agreements provided for an employee pension plan (J.S. App. A-27).[1] In January 1963, White Motor Corporation purchased the assets of Minneapolis-Moline Company and succeeded to the latter's bargaining obligation to the Union and to its obligations under the pension plan (*ibid.*).[2]

The 1971 version of the plan,[3] which is pertinent to this case, provided that covered employees with

[1] "J.S. App." refers to the appendix to the Jurisdictional Statement. "J.A." refers to the joint appendix to the briefs in the court below.

[2] White Motor Corporation operated the plants through its subsidiary, White Farm Equipment Company. Both are referred to herein as "the Company."

[3] Relevant provisions of the plan are set out at J.A. A-122 to A-147.

ten years of credited service were entitled to a specified schedule of benefits upon retirement at or after age 65 (Section 6.01). Additionally, the plan provided that employees with ten years of credited service who terminated employment after the age of 40 would be entitled to draw benefits upon reaching age 65 (Section 6.03). See J.A. A-122 to A-125, A-126.

The 1971 plan contained a provision, first inserted in the 1968 plan, requiring that unpaid past service liability[4] be amortized, i.e., funded, over a 35-year period (Section 9.05) (J.S. App. A-28).

The plan also contained the following provisions:

> *Section 6.09—Source of Pensions*
>
> Pensions shall be payable only from the Fund and rights to pensions shall be enforceable only against the Fund.
>
> * * * * *
>
> *Section 6.17—No Other Benefits*
>
> No benefits other than those specifically provided for are to be provided under this Plan. No employee shall have any vested right under the Plan prior to his retirement and then only to the extent specifically provided herein.
>
> * * * * *

[4] "Unpaid past service liability" is the excess of the accrued liability of the pension fund over the present value of the fund's assets. In a continuing plan, such liability is normally covered by the employer's contributions on behalf of present employees.

Section 9.04—Rights of Employees in the Fund

> No employees, participant or pensioner shall have any right to, or interest in, any part of any Trust Fund created hereunder, upon termination of employment or otherwise, except as provided under this Plan and only to the extent therein provided. All payments of benefits as provided for in this Plan shall be made only out of the Fund or Funds of the Plan and neither the Company nor any Trustee nor any Pension Committee or Member thereof shall be liable therefor in any manner or to any extent. [J.S. App. A-28 to A-29.]

Notwithstanding these provisions, the Company agreed, in separate letters of understanding, to pay benefits amounting to $7,000,000 above the assets of the fund (J.S. App. A-29; J.A. A-148 to A-150).

2. On June 30, 1972, the Company closed the Lake Street plant in Minneapolis, and attempted to terminate the pension plan.[5] However, the Union secured an arbitration award requiring the Company to continue the plan in effect until the expiration of the collective bargaining agreement on May 1, 1974, to pay benefits pursuant to the terms of the plan until the assets of the fund were exhausted, and then to

[5] The Minneapolis plant employed about 800 workers covered by the pension plan. The Hopkins plant remained open and continues to operate under a new pension plan. J.S. App. A-3, n. 5.

pay benefits in accordance with the terms of the guarantee letters (J.S. App. A-30).[6]

Prior to the termination of the plan,[7] the Minnesota Legislature enacted the Private Pension Benefits Protection Act[8] ("Minnesota Pension Act"), which became effective on April 10, 1974. The Minnesota Pension Act imposes certain obligations on any employer who ceases to operate a place of employment or who terminates a pension plan. As described by the district court, the statute operates as follows (J.S. App. A-31 to A-32):

> Minn. Stat. Ann. §§ 181B.03-.06 imposes a "pension funding charge" directly against any employer who ceases to operate a place of employment or a pension plan. Such charge shall be equal in amount to the statutory provisions. These sections essentially provide that any employee who has completed ten or more years of credited service under a pension plan has, upon termination of that plan or of his place of employment, an automatically vested right to all pension benefits he would have received had the particular plan not been terminated or had the place of business not been closed.

[6] *White Motor Corp. and U.A.W.*, 61 Lab. Arb. 320, 328, 331. The award was upheld in *International Union, etc.* v. *White Motor Corp.*, 505 F. 2d 1193 (C.A. 8), certiorari denied, 421 U.S. 921.

[7] The Company terminated the plan on May 1, 1974, and paid the regular benefits until March 1976, when the benefits were then diminished to the levels set out in the guarantee letters (J.S. App. A-30; J.S. 5).

[8] Minn. Stat. Ann. §§ 181B.01-181B.17 (Cum. Supp. 1976).

> Minn. Stat. Ann. §§ 181B.09-.12 provide that the Commissioner of Labor and Industry, after investigation, shall certify amounts owing by an employer. That certified amount is declared, under § 181B.11, to "be a lien upon the employer's assets." The pension funding charge is used to purchase an annuity payable to the employee when he reaches normal retirement age.

Pursuant to the statute, appellant Malone notified the Company that it owed a pension funding charge of $19,150,053 (J.S. App. A-31; J.A. A-151 to A-154).

3. The Company filed suit in the district court for declaratory and injunctive relief alleging, *inter alia*, that the Minnesota Pension Act interfered with the process of collective bargaining sanctioned by the National Labor Relations Act and therefore was preempted by that Act.

The district court denied the Company's motion for summary judgment and a preliminary injunction (J.S. App. A-47 to A-48). In that court's view, the Minnesota Pension Act did not conflict with the National Labor Relations Act because the Minnesota Act did not " 'regulate conduct so plainly within the central aim of federal regulation involv[ing] too great a danger of conflict between power asserted by Congress and requirements imposed by state law . . .' [*San Diego Building Trades Council* v.] *Garmon* * * *." J.S. App. A-40. Moreover, the district court found that Congress, in enacting the Welfare and Pension Plans Disclosure Act of 1958, 72 Stat. 997 ("Disclosure Act"),[9] contemplated that the regulation of pension plans would be left to the states (J.S. App. A-44). Finally, the district court rejected the Company's contention that *Local 24, Teamsters Union* v. *Oliver*, 358 U.S. 283 (discussed *infra*, pp. 16-19), was controlling. The district court concluded that the "inherent conflict and delicate balance which exists between labor and antitrust policy does not exist between labor policy and the regulation of pensions. Congress, in formulating its policies, has indicated that states may regulate pensions." (J.S. App. A-46.)

2. The court of appeals reversed (J.S. App. A-1 to A-25). It first noted (J.S. App. A-8):

> The Minnesota Pension Act obligations conflict with White Motor's pension plan provisions in the following respects: (1) the Act grants employees vested rights to pension benefits which are not available under the pension plan; (2) to the extent of any deficiency in the pension fund, the Act requires satisfaction of pension benefits from the general assets of the employer, while the pension plan provides that benefits shall be paid only out of the pension fund; (3) the Act does not permit employers to escape liability for funding of pension rights, but the pension plan permits White Motor to terminate the plan at any time, and in so doing end any liability for future payments to the pension fund, save those specifically guaranteed. Thus, essential features of the pension plan, deferred funding of past

[9] See pp. 12-13 and note 11, *infra*.

> service liability coupled with limited employer liability and the power to terminate, were negated by the Pension Act. [Footnote omitted.]

The court of appeals added: "The Minnesota Pension Act directly intrudes upon the employer's substantive obligations under the pension plan, obligations arrived at freely through collective bargaining * * *" (J.S. App. A-11). Relying particularly on *Lodge 76, Machinists* v. *Wisconsin Employment Relations Commission*, 427 U.S. 132, and *Local 24, Teamsters Union* v. *Oliver, supra*, the court concluded, "* * * a state cannot modify or change an otherwise valid and effective provision of a collective bargaining agreement" (J.S. App. A-20).

The court of appeals further held that the Disclosure Act did not require a contrary conclusion, since "the Act's provisions [d]o not affect substantive terms of employee benefit plans" (J.S. App. A-21). The court added (J.S. App. A-23):

> Clearly, the preemption disclaimer provision of the Disclosure Act, § 309(b), relates to state statutes governing those obligations of trust undertaken by persons managing, administrating, or operating employee benefit funds, the violation of which gives rise to civil and criminal penalties. Accordingly, no warrant exists for construing this legislation to leave to a state the power to change substantive terms of pension plan agreements.

SUMMARY OF ARGUMENT

The NLRA does not preempt a state from exercising its police power to protect workers by regulating the employment relationship, as Minnesota has done here. Moreover, the Disclosure Act of 1958, which was in effect when the Minnesota Act was passed, reserved to the states the responsibility for regulating the operations of pension plans.

The court of appeals erred in relying on *Local 24, Teamsters* v. *Oliver*, 358 U.S. 283, since that decision upheld NLRA preemption of a statute which sought "specifically to adjust relationships in the world of commerce." *Id.* at 297. The Minnesota law here, by contrast, merely requires certain minimum standards of funding and vesting which the state has determined are necessary to protect the welfare of its citizens. Like valid state health regulations, it leaves to the bargaining process all questions of the extent, if any, to which the state-required minimum standards will be exceeded in particular work situations.

ARGUMENT

The National Labor Relations Act Does Not Preclude A State From Regulating Collectively Bargained Pension Plans To Insure That Employees Are Afforded A Minimum Level Of Benefits Upon Termination Of Such Plans

1. While Congress has adopted a national policy to govern labor-management relations, the National Labor Relations Act "leaves much to the states,

though Congress has refrained from telling us how much. We must spell out from conflicting indications of congressional will the area in which state action is still permissible." *Garner* v. *Teamsters Union*, 346 U.S. 485, 488. In the first case decided by this Court involving the question of preemption under the NLRA, the Court, applying the principle, already well-established in other fields of the law, that "an 'intention of Congress to exclude States from exerting their police power must be clearly manifested,'" concluded that the NLRA did not bar the states from regulating violence occurring in a labor dispute. *Allen-Bradley Local* v. *Wisconsin Board*, 315 U.S. 740, 749. See also *Auto Workers* v. *Wisconsin Board*, 351 U.S. 266, 274-275; *Lodge 76, Machinists* v. *Wisconsin Employment Relations Commission*, 427 U.S. 132, 136 n. 2.

Although not all subjects which a state may seek to regulate under its police power remain unaffected by the NLRA (see *infra*, pp. 16-19), the principle that state police power is not displaced absent a clear manifestation of congressional intent applies, not only to violence, but also to the establishment of minimum standards on other subjects which vitally affect the health, safety, or welfare of the state's citizens. This includes state regulation of "the employment relationship to protect workers within the State," through such means as "[c]hild labor laws, minimum and other wage laws, laws affecting occupational health and safety, and work-

men's compensation laws." *De Canas* v. *Bica*, 424 U.S. 351, 356.[10]

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[10] To be sure, *De Canas* did not involve "labor law preemption" (Response of Appellees to Memorandum for the United States ("Resp.") 3-4), but the question whether the Immigration and Nationality Act preempted a state statute regulating the employment of illegal aliens. However, the principle which it applied—i.e., that a preclusion of state power to regulate "the employment relationship to protect workers within the State" requires a clear manifestation of congressional intent—is equally applicable to "labor law preemption."

Nor does the fact, noted by the Company (Resp. 4), that Section 18(a) of the Fair Labor Standards Act 52 Stat. 1069, as amended, 29 U.S.C. 218(a), expressly grants to the states the right to promulgate higher minimum wage and lower maximum hour laws detract from our position that these subjects are traditionally within the state's police powers. In enacting the Fair Labor Standards Act, Congress *did* express its intention to regulate minimum wages and maximum hours, thereby creating a presumption that the states' preexisting authority over these subjects had been displaced. A specific provision (Section 18(a)) was therefore necessary to assure that states would retain the power they possessed to set minimum wages and maximum hours which were more protective than the federal regulation. Thus the House Report on S. 2475, the bill which as enacted became the FLSA of 1938 stated: "The bill, if enacted, will not *supersede* any State minimum wage law if the State minimum wage is higher. No State maximum hour law will be *superseded* if the State maximum is lower." H. Rep. No. 1452, 75th Cong., 1st Sess. 10 (1937) (emphasis supplied). On the other hand, the finding of preemption in *Erie R. R. Co.* v. *New York*, 233 U.S. 671 (Resp. 3), is explained by the fact that the 1907 federal hours act limiting the working hours of railroad workers contained no provision permitting more protective state standards. Similarly, the preemption finding in *Railway Employees' Department* v. *Hanson*, 351 U.S. 225 (Resp. 3), is attributable to the fact that Congress expressly provided that the Railway Labor Act's authorization of the union shop would preempt

The Minnesota Act at issue here, designed to protect workers from the severe effects of the precipitous loss of their pensions is "certainly within the mainstream of such police power regulation." *De Canas* v. *Bica*, *supra*. No less than minimum wage or workmen's compensation laws, laws protecting pension benefits "regulate the employment relationship" to provide workers within the state with an assurance of economic security and to prevent their becoming a welfare burden to the state. In the area of pensions, as well as workmen's compensation, "a State, in the exercise of its power to pass such legislation as reasonably is deemed to be necessary to promote the health, safety and general welfare of its people * * * may require that these human losses shall be charged against the industry * * *." *Mountain Timber Co.* v. *Washington*, 243 U.S. 219, 243. See also *New York Central R. R. Co.* v. *White*, 243 U.S. 188, 203-204.

2. Proof that Congress intended that matters of pension regulation be left to the states is found in the Disclosure Act of 1958, which was in effect at

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contrary state law. Compare Section 14(b) of the NLRA, 29 U.S.C. 164(b), which "was designed to prevent other sections of the Act [i.e., the proviso to Section 8(a)(3), 29 U.S.C. 158(a)(3), which specifically authorized the union shop] from completely extinguishing state power over certain union-security arrangements." *Retail Clerks Assn.* v. *Schermerhorn*, 373 U.S. 746, 751. Here, as shown above, Congress, in enacting the NLRA, made no effort to set minimum standards for the health, safety, or welfare of employees; there is thus no basis for inferring that Congress has displaced the state's pre-existing authority to do so.

the time the Minnesota Act was passed.[11] The Disclosure Act

> provide[d] for registration, reporting, and disclosure of the financial operations of all types of private employee welfare and pension benefit plans. It [was] designed to place the primary responsibility for the policing and improved operations of these plans upon the participants themselves, with a minimum of interference in the natural development and operation of such plans, *to leave to the States the detailed regulations relating to insurance, trusts, and other phases of their operations*, and to place the least possible burden by way of cost and otherwise upon the plans and upon the Federal Government. * * *[12]

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[11] The Disclosure Act has since been superseded and repealed by the more comprehensive Employment Retirement Income Security Act of 1974, 88 Stat. 829, 29 U.S.C. (Supp. V) 1001 *et seq.* (ERISA). See 29 U.S.C. (Supp. V) 1031. The Minnesota Act has been preempted by ERISA, which provides for preemption of "any and all State laws insofar as they may now or hereafter relate to any [covered] employee benefit plan." Section 514, 29 U.S.C. (Supp. V) 1144. The preemption section, however, did not take effect until January 1, 1975, and Section 514(b)(1) provides that the section "shall not apply with respect to any cause of action which arose, or any act or omission which occurred before, January 1, 1975." The present controversy is therefore not moot since ERISA was not in effect at the time the Company terminated its pension plan. See *Fleck* v. *Spannaus*, 251 N.W. 2d 334 (Minn. Sup. Ct.). The Company does not dispute the fact that, but for the asserted preemption by the NLRA, the Minnesota Act applies to the termination involved here.

[12] S. Rep. No. 1440, 85th Cong., 2d Sess. 19 (1958) (emphasis added).

[Footnote continued on page 14]

Congress thus intended to leave to the States the responsibility for regulating pension plans as Minnesota has done here. Congress specifically provided that the Disclosure Act did not "exempt or relieve any person from any liability * * * provided by any present or future law * * * of any State affecting the operation or administration of pension plans." [13] Section 10(b), 72 Stat. 1003. And the legislative history explicitly disclaims any possibility that the Dis-

[12] [Continued]

See also remarks of Senator Douglas, 104 Cong. Rec. 7061 (1958); remarks of Rep. Santangelo, 104 Cong. Rec. 16434 (1958).

[13] The court of appeals distinguished this section of the Disclosure Act by holding that it "[c]learly * * * relates to state statutes governing those obligations of trust undertaken by persons managing, administrating or operating employee benefit funds, the violation of which gives rise to civil and criminal penalties. Accordingly, no warrant exists for construing this legislation to leave to a state the power to change substantive terms of pension plan agreements" (J.S. App. A-23). Such a narrow reading of this section is contradicted by the plain words of the statute. The Minnesota Act on its face is one "affecting the operation or administration" of pension plans, and the Company is a "person" (see Section 3, 72 Stat. 997) with a $19 million "liability * * * provided by" the Minnesota Act. Furthermore, if the Disclosure Act did not "leave to a state the power to change substantive terms of pension plan agreements," as the court of appeals concluded, then it must have taken such power away from the states. See pp. 9-12, *supra*. Not only is the statute bare of any such preemption, express or implied, but Section 10(b) and the legislative history quoted in the text convincingly establish Congress' intent to the contrary. Finally, the Senate report states simply that Section 10(b) "is the usual provision with respect to the effect of other laws." S. Rep. No. 1440, *supra*, at 33. This statement casts serious doubt on the court of appeals' conclusion that the section is limited to preserving only state statutes providing penalties for mismanagement.

closure Act would intrude on state regulation (S. Rep. No. 1440, *supra*, at 18) (emphasis added):

> There is no desire to get the Federal Government involved in the regulation of these plans but a disclosure statute which is administered in close cooperation with the States could also be of great assistance to the States in carrying out their regulatory functions.
>
> * * * * *
>
> [T]he legislation proposed is not a regulatory statute. *It is a disclosure statute and by design endeavors to leave regulatory responsibility to the States.* A Federal disclosure statute, if properly coordinated with the States, as the bill provides, could eliminate all but one disclosure report and leave insurance, trusts, and other detailed regulations to the States.

The legislative history also makes clear that Congress was concerned about the specific problem Minnesota has remedied here, namely, the loss of employee benefits because of inadequate vesting and funding provisions. A federal disclosure law was believed appropriate to help expose abuses so that remedial action of this nature could be taken by the states. S. Rep. No. 1440, *supra*, at 4, 15.

Moreover, when it enacted ERISA in 1974, Congress adopted a broad preemption provision, n. 11, *supra*, which further indicates that it was aware of the regulatory role which the states had played at the time the Minnesota Act was adopted. In explaining the Conference Report to the Senate, Senator

Javits, one of the managers of the Senate bill, expressly noted that state termination insurance plans would thenceforth be preempted.[14]

The court of appeals erred in rejecting the district court's reliance on this unambiguous expression of congressional intent (J.S. App. A-20 to A-23). Had Congress, by enacting the NLRA, preempted the states from regulating collectively bargained pension plans, its subsequent declarations in passing the Disclosure Act that states were free to regulate such plans would make no sense. As previously noted, Congress will be presumed to have preempted the states' police power to prescribe minimum standards for the health, safety, or welfare of its citizens only where it has "clearly manifested" its intent to do so (*Allen-Bradley Local, supra*). Here, not only is any indication of such intent absent, but the history of the Disclosure Act clearly manifested an intent *not* to preempt the states from regulation.[15]

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[14] Senator Javits stated (120 Cong. Rec. 29942 (1974)): "In view of Federal preemption, State laws * * * establishing State termination insurance programs, et cetera, will be superseded." Representative Dent, a manager of the bill in the House, in presenting the conference report to his colleagues, stated that the broad preemption provision "eliminat[ed] the threat of conflicting and inconsistent State and local regulation." 120 Cong. Rec. 29197 (1974).

[15] The courts have recognized that the responsibility for protecting the worker's interest in the operation and termination of privately created pension and welfare funds has traditionally been considered a state function. See *Thacher* v. *United Construction Workers*, 180 N.E. 2d 245, 246-247, 10 N.Y. 2d 439; *O'Rourke* v. *Breakstone Bros., Inc.*, 218 F. Supp.

3. Against this convincing evidence that Congress intended to preserve the power of the states to regulate pension plans, the court of appeals erred in relying on *Local 24, Teamsters* v. *Oliver*, 358 U.S. 283. In that case, this Court held that the NLRA barred the State of Ohio from invalidating, under its antitrust laws, a minimum rental provision in a collective bargaining agreement between motor carriers and the union representing their drivers, which provision applied when a carrier leased a truck from an owner-driver. The purpose of the provision was to insure that the rental would be high enough to enable the owner-drivers to receive a wage commensurate with that established by the collective agreement for the motor carriers' own drivers, thereby removing the incentive to undercut the drivers' wages through leasing. The Court concluded that, since the NLRA imposed a duty on the carriers to bargain with the union concerning wages and since the minimum rental provision was designed to protect the negotiated

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648, 650-651 (S.D. N.Y.). Thus, it has repeatedly been held that "pension trust funds established for the benefit of union members are established under the laws of the several states." *Craig* v. *Bemis Co., Inc.*, 517 F. 2d 677, 680 (C.A. 5); *Miller* v. *Davis*, 507 F. 2d 308, 311 n. 3 (C.A. 6); *Snider* v. *All States Administrators*, 481 F. 2d 387, 390 (C.A. 5), certiorari denied, 415 U.S. 957; *Connell* v. *United States Steel Corp.*, 516 F. 2d 401, 405 (C.A. 5); *Costello* v. *Lipsitz*, 547 F. 2d 1267, 1274-1275 n. 29 (C.A. 5); *Hurd* v. *Hutnik*, 419 F. Supp. 630, 653 (D. N.J.). And, the Fifth Circuit added in *Snider, supra*, "there is an exception to the preemption doctrine for 'matters of peripheral concern to federal labor law.' One of the areas not removed from governing state law is the creation of trust funds for the benefit of union members."

wages, application of state antitrust laws "would frustrate the parties' solution of a problem which Congress has required them to negotiate in good faith toward solving, and in the solution of which it imposed no limitations relevant here." 358 U.S. at 296. The Court emphasized that "[w]e have not here a case of a collective bargaining agreement in conflict with a local health or safety regulation; the conflict here is between the federally sanctioned agreement and state policy which seeks specifically to adjust relationships in the world of commerce." *Id.* at 297.

Thus, in *Oliver*, the state, through the application of its antitrust laws, sought to preclude the parties from bargaining over a subject as to which the NLRA mandated bargaining—*i.e.*, the minimum rental which an owner-operator could charge for the lease of his trucks—because of its judgment that such bargaining deprived the owner-operator of "reasonable freedom of action" in using his property. *Local 24, Teamsters* v. *Oliver*, *supra*, 358 U.S. at 289. Granted that state antitrust laws "materially affect the economic welfare of citizens" (Co. Resp. 6), and that such laws may constitute an exercise of the state's police powers, the purpose and effect of the application of such laws in *Oliver* was "specifically to adjust relationships in the world of commerce"—to prohibit adjustment of a subject through the process of collective bargaining. That is a matter on which Congress, in enacting the NLRA, has spoken, and therefore state power has been superseded. The NLRA reflects Congress' judgment that industrial strife is best averted by requir-

ing both labor and management to bargain collectively about wages, hours, and other terms and conditions of employment. For a state to preclude collective bargaining on a subject within the area of mandatory bargaining under the NLRA, as Ohio did in *Oliver*, directly conflicts with Congress' contrary judgment and alters the balance between labor and management which Congress has struck in the NLRA.[16] Cf. *National Labor Relations Board* v. *Insurance Agents' Union*, 361 U.S. 477, 489-490.

The Minnesota pension law involved here, on the other hand, does not purport "specifically to adjust relationships in the world of commerce." It does not preclude bargaining over a federally mandated bargaining matter. Rather, it merely requires that any negotiated pension plan conform to certain minimum standards of funding and vesting, which the state has determined are necessary to protect the economic welfare of its citizens and to prevent them from becoming a welfare burden to the state. As shown above, Congress, in enacting the NLRA, did not intend to supersede the states' power to enact minimum protective measures of this kind. The fact that pensions are "conditions of employment" and thus subject to bargaining under the NLRA (*Inland Steel Co.* v. *National Labor Relations Board*, 170 F. 2d 247

[16] Similarly, *California* v. *Taylor*, 353 U.S. 553, on which the Company relies (Resp. 3), involved the state's attempt to preclude collective bargaining on behalf of a category of employees (employees of a state-owned railroad) for which federal law (the Railway Labor Act) mandated bargaining.

(C.A. 7), certiorari denied, 336 U.S. 960) does not require a contrary conclusion. The states are free, for example, to require employers to meet minimum standards in furnishing sanitation and lighting facilities, even though these too are conditions of employment that are subject to bargaining. Moreover, had Minnesota enacted a statute forbidding the knowing employment of illegal aliens, for example, the Company could not successfully argue that such a statute must yield under *Oliver* to a collectively bargained agreement which provided for the employment of such aliens or which specified the wages to be paid them. Cf. *De Canas* v. *Bica, supra*. The situation is no different here.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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